

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.35583 of 2020

Arising Out of PS. Case No.-57 Year-2020 Thana- GAUTAMBUDHNAGAR District- Siwan

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1. Rajendra Pasi @ Rajendar Pasi, Gender-male, aged about 48 years, Son of Late Raghunath Pasi
 2. Suresh Pasi, Gender-Male, Aged about 51 years, Son of Late Shankar Pasi
- Both are Resident of village- Sikanderpur, P.S.- G.B.Nagar, District – Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Javed Aslam, Advocate
For the State : Mr. Satya Nand Shukla, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-06-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Javed Aslam, learned counsel for the petitioners and Mr. Satya Nand Shukla, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioners apprehend arrest in connection with G.B. Nagar PS Case No. 57 of 2020 dated 06.03.2020, instituted under Sections 30(a)/34/36/38/41(1) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).



4. The allegation against the petitioners is that when the police on information went to the house of petitioner no. 1, 16.5 litres of liquor was recovered whereas from the house of petitioner no. 2, 10 litres of country made liquor was recovered.

5. Learned counsel for the petitioners submitted that the so called recovery is not from the conscious possession of the petitioners and none of his family members were present. It was submitted that only on suspicion they have been named and further that they have no criminal antecedent.

6. Learned APP submitted that as per the allegation, the recovery being from the house of the petitioners, the bar of Section 76(2) of the Act would apply as an offence is made out under the Act and, thus, the present application itself would not be maintainable.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned APP.

8. Once recovery is alleged to be from the house of the petitioners, *prima facie*, an offence is made out under the Act and, thus, the present application under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to bar of Section 76(2) of the Act.



9. Accordingly, the application stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

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